

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALLEN ROBINSON,

Defendant-Appellee.

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UNPUBLISHED

January 19, 1999

No. 205624

Recorder's Court

LC No. 96-009140

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

In this case, defendant was charged with possession with intent to deliver 225 grams or more, but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), and delivery of 50 grams or more, but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). The first count is based upon cocaine seized at defendant's residence while the second count is based upon the theory that defendant supplied cocaine to a dealer which was eventually sold to an undercover officer. Defendant successfully sought suppression of the evidence seized in the raid of his home. The prosecution then sought leave to appeal and this Court granted leave on August 20, 1997.

On appeal, the prosecution argues that probable cause existed in the supporting affidavit to search defendant's residence and, thus, the evidence obtained in the search of defendant's residence should not have been suppressed. Specifically, the prosecution contends that even ignoring those portions of the affidavit stricken (because they were false), what remained in the affidavit is sufficient to support a finding of probable cause.

A search warrant may not issue unless probable cause exists to justify the search. *People v Sloan*, 450 Mich 160, 166-167; 538 NW2d 380 (1995). Probable cause exists when the facts and circumstances would allow a person of reasonable prudence to believe that the evidence of a crime or contraband sought is in the stated place. *People v Chandler*, 211 Mich App 604, 612; 536 NW2d 799 (1995). This Court reviews for clear error the trial court's findings of fact in deciding a motion to suppress evidence while we review de novo the trial court's ultimate decision regarding a motion to suppress. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

After concluding that several statements in the affidavit supporting the search warrant were false and made by the affiant in reckless disregard for the truth, the trial court struck from the affidavit references to events which transpired at defendant's residence. The prosecution does not take issue with the trial court's ruling that the affidavit contained false information. Instead, the prosecution argues that the remaining information in the affidavit not rejected as false was sufficient to establish probable cause for the search.

After reviewing the valid information in the affidavit, we conclude that it did not establish probable cause to search defendant's residence. The affidavit established that in September 1996, an undercover police officer working in the narcotics division arranged a cocaine purchase from codefendant Walter Jordan, who lived at a home on Stout in the City of Detroit. During a telephone conversation, Jordan told the police officer that when the cocaine arrived he would page the officer. Shortly thereafter, while the Stout home was under police surveillance, a black Ford Tempo was seen pulling up to the Stout address. The driver went into the home where he remained for a short period of time. Immediately after the driver of the Tempo left, Jordan paged the undercover officer and told him that the cocaine had arrived. Shortly thereafter, the undercover officer purchased cocaine from Jordan. While the Stout home was under surveillance, the officers ran a LEIN check on the Tempo and discovered that it was registered to "Allen Robinson" with a registration address on Warwick in the City of Detroit. At the evidentiary hearing, the police officer keeping the Stout home under surveillance identified defendant as the driver of the Tempo. However, there is no indication in the affidavit that the affiant knew the actual identity of the driver of the Tempo *at the time the warrant was sought*.

From the information in the affidavit, it would be logical to assume that the individual driving the Ford Tempo supplied Jordan with the cocaine that shortly thereafter was sold to the undercover officer. However, there is absolutely no evidence connecting that individual to the house on Warwick that would give rise to a reasonable belief that contraband would be found at Warwick.

Based upon the information in the affidavit, the police officer did not know the identity of the individual driving the Tempo. At best, the officer knew that the Tempo was registered to "Allen Robinson" with a registration address of 11303 Warwick. Considering only the information that survived the trial court's ruling, there was no evidence of drug trafficking out of the house on Warwick. Because the police officers did not know the identity of the driver of the Tempo, the necessary link connecting Jordan's drug supplier to the house on Warwick was missing.

Because there did not exist facts and circumstances which would allow a person of reasonable prudence to believe that evidence of a crime or contraband would be found at the home on Warwick, there existed no probable cause for the issuance of the search warrant. Consequently, we hold that the trial court did not err in granting defendant's motion to suppress the evidence.

Affirmed.

/s/ Gary R. McDonald

/s/ Kathleen Jansen

/s/ Michael J. Talbot